

SERVICE DATE - SEPTEMBER 12, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33960

CENTRAL ILLINOIS RAILROAD COMPANY-LEASE AND OPERATION
EXEMPTION-LINES OF THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY AT CHICAGO, COOK COUNTY, IL

Decided: September 6, 2002

On November 16, 2000, Central Illinois Railroad Company (CIRR) filed a notice of exemption under 49 CFR 1150.31 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate approximately 5.9 miles of mainline track and approximately 12.47 miles of sidetrack, collectively referred to as the Lumber District and Illinois Northern Line (IN Line) or portion thereof. The track is located in Chicago, Cook County, IL.¹ Notice of CIRR's exemption authority was served and published in the Federal Register (65 FR 76003) on December 5, 2000.²

On June 29, 2001, Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to reject the notice and to revoke the exemption. CIRR and BNSF (jointly, Carriers) filed a joint reply to UTU-IL's petition. UTU-IL filed a supplement to its

¹ According to the exemption notice filed by CIRR, the Lumber District is located: "between a point 300 feet south of the point of the frog on BNSF's crossover to the main line of the Norfolk Southern Railway Company, which point is south of the wye track that enters the west end of BNSF's Western Avenue Yard, and the end of BNSF's ownership at Lumber Street approximately 500 feet east of Canal Street, including trackage that extends north from Cermak Road parallel to Sangamon Street ending at a point of the frog at Track No. 7 even with Milepost No. 2.0 on BNSF's main line east of Western Avenue Yard." CIRR's notice also indicates that the IN Line is located: "between a point 10 feet north of the Chicago Sanitary and Ship Canal and a point 100 feet west of the westernmost railroad diamond near 26th and Western Avenue."

² The exemption became effective on November 23, 2000, seven days after it was filed.

petition, and the Carriers replied to the supplemental filing. In this decision, we find that UTU-IL's petition lacks merit.³

DISCUSSION AND CONCLUSIONS

Jurisdiction. UTU-IL argues that the trackage that CIRR is leasing from BNSF is outside our licensing authority. To support this assertion, UTU-IL submitted verified statements from two BNSF employees, Walter Sattler, Jr. and John W. Voshall, who claim that they are familiar with the leased trackage. The employees indicate that the trackage consists of light rail that is classified as "excepted track" under Federal Railroad Administration (FRA) standards.⁴ They indicate further that, before leasing the Lumber District and the IN Line to CIRR, BNSF had operated the trackage through yard assignments from the BNSF's Western Avenue Yard and Corwith Yard. UTU-IL notes that a 1.90-mile portion of the IN Line had at one time been operated as mainline track, but that that portion is now stub-ended and the union argues that this track is now used by CIRR only to store and switch cars that are moved to and from customer spurs and sidings.

Thus, UTU-IL claims that CIRR is not operating as a carrier subject to our authority. Rather, UTU-IL views CIRR as a contract operator, providing switching service for BNSF's traffic in the Chicago terminal, and operating the leased trackage at BNSF's invitation. The union asserts that CIRR merely provides a locomotive and personnel and maintains the trackage at minimum standards, while BNSF provides the car supply, trackage, traffic, and routing. It contends further that CIRR is not serving new shippers, and only continues to serve the shippers that were served by BNSF. According to UTU-IL, CIRR uses low-powered locomotives to serve each line. The same crew serves each line and is transported by motor vehicle between the lines.

The Carriers respond that UTU-IL has failed to establish that the trackage is outside the Board's jurisdiction. They assert that CIRR is providing rail service to shippers and receivers on the

³ Previously, in a decision that was served on November 22, 2000, UTU-IL's request to stay the effective date of the exemption was denied (Stay Decision). UTU-IL's appeal of the Stay Decision was denied in a decision served November 30, 2000.

⁴ See 49 CFR 213.4.

lines. To support this assertion, they submitted letters from 6 shippers located on the trackage⁵ indicating that CIRR is providing them with rail service.⁶

The testimony of the BNSF employees indicates that BNSF had operated the Lumber District and IN Line as exempt spur or sidetracks. However, CIRR acquired the trackage to become a rail carrier, and is operating the involved track, in common carriage, as its entire line of railroad. The exception in section 10906 does not apply when a noncarrier acquires the right to operate over tracks for the purpose of becoming a rail carrier. See GWI Switching Services, L.L.P.—Operation Exemption—Lines of Southern Pacific Transportation Company, STB Finance Docket No. 32481 (STB served Aug. 8, 2001); Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL., STB Docket No. 41986 (STB served Sept. 12, 1997), reconsideration denied (STB served Sept. 18, 1998), aff'd sub nom. United Transp. Union v. STB, 183 F.3d 606 (7th Cir. 1999) (Effingham).

UTU-IL's attempts to distinguish Effingham are not persuasive. The fact that CIRR, as the lessee of the track, accepted the assignment of contracts between the customers on the line and lessor BNSF does not turn the lease into a sham transaction. CIRR is a corporate entity that is not owned or otherwise affiliated with BNSF. The lease is an arm's-length transaction. Numerous sales and leases of this type have taken place in the past two decades as Class I railroads have divested themselves of the operation of marginal lines.

CIRR is not an agent of BNSF. The lessee is the common carrier responsible for service on the involved track and is the entity to which its customers look when seeking service. The fact that the CIRR leases its locomotives from BNSF and has a contract governing its relationship with the line haul railroad with which it interlines—as do many short lines—does not undercut its status as the licensed common carrier with the statutory obligation to provide service on the involved track.

⁵ The shippers are: Crown Steel Sales, Inc.; Pure Asphalt Company; International Cellulose, Inc.; Maloney Lumber & Plywood Co., Inc.; North American Sugars Inc.; and Colonial Brick Co., Inc.

⁶ UTU-IL filed a motion to strike the shipper letters, contending that they were not verified and do not indicate that they relate to this proceeding. The motion will be denied. The Board's verification rules apply only to pleadings and verified statements. Letters and unverified supporting materials are routinely accepted into the record. The absence of verification goes to the weight accorded them and not to their admissibility. See SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, STB Finance Docket No. 33995 (STB served Apr. 13, 2001).

Thus, CIRR is a common carrier subject to the Board's jurisdiction. The Board finds UTU-IL's arguments to the contrary unpersuasive.

Rejection. Notices of exemption that contain false and/or misleading information are void ab initio under 49 CFR 1150.32(c) and are subject to being rejected. UTU-IL claims that CIRR provided false and misleading information in the exemption notice it filed by incorrectly identifying the acquiring entity. It indicates that corporate reports from the State of Illinois indicate that the name of the operator is "Central Illinois Railroad Company" without the word, "The." UTU-IL also submitted copies of interrogatories in which the carriers concede that the correct corporate name is "Central Illinois Railroad Company" and that the name "The Central Illinois Railroad Company" was used by mistake in the Lease Agreement between CIRR and BNSF and the notice of exemption. UTU-IL also submitted excerpts from The Official Railroad Station List, OPSL 6000-U (OPSL), and The Official Railway Equipment Register for July 2001, that show the name "Central Illinois Railroad Company."

UTU-IL also questions CIRR's proper address. It notes that CIRR's filing shows its address as: "306 McCoy Street, Granville, IL 61326." UTU-IL submitted copies of the OPSL which lists the address of CIRR as: "306 South McCoy Street, Granville, IL 61326." UTU-IL asserts further that the map CIRR submitted with its notice was deficient. UTU-IL also expresses concerns about the notice that the Board published and served, claiming that notice did not clearly indicate that the transaction involves two distinct and separate track segments.

The Carriers concede that the name and address of CIRR were incorrect in the filed notice of exemption. But, they assert that the notice was not materially misleading. They argue that the incorrect name and address were akin to a typing error, a misprint or a spelling error. They state that UTU-IL and any other interested party could discern without undue effort CIRR's correct name and address. They indicate further that the filed notice and map accurately depicted the trackage leased to CIRR as two separate operations.

We find no merit in UTU-IL's contention that the filed notice of exemption is void because the identity and address of the carrier were incorrect. The errors were trivial, were not misleading, and were not material to the grant of the exemption.⁷

We also reject UTU-IL's claim that our published notice was defective. The trackage leased to CIRR was accurately and correctly depicted in the notice and map filed by CIRR. The published notice merely summarized the trackage that was described in detail in the filed notice of exemption.

⁷ The title of this proceeding has been modified to reflect CIRR's correct name.

Revocation. Under 49 U.S.C. 10502(d), we may revoke an exemption if regulation is necessary to carry out the transportation policy of 49 U.S.C. 10101. The party seeking revocation must express reasonable, specific concerns to demonstrate that revocation of the exemption is warranted. See I&M Rail Link LLC–Acquisition and Operation Exemption–Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997) (I&M), slip op. at 6, aff’d sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

UTU-IL argues that revocation is warranted under the Rail Transportation Policy in 49 U.S.C. 10101. UTU-IL first asserts that CIRR’s use of its locomotives is grossly inefficient. It points out that, when BNSF operated the trackage, the locomotives used to serve the trackage were also used for other work at the Western Avenue Yard and Corwith Yard. The union argues that CIRR locomotives are not fully utilized.

UTU-IL also questions the safety of CIRR’s operations and submitted copies of 10 “incident reports” allegedly prepared by Mr. Voshall describing various operating problems he encountered with CIRR’s operations on the Lumber District. The reports purportedly indicate that shipments have been delayed because of the extra interchange. Apparently, CIRR operates the Lumber District during the day shift, while BNSF assigns this traffic to the afternoon shift at Western Yard, causing an 18-hour delay in serving customers. The extra interchange also requires additional paperwork and supervision. Mr. Voshall indicates that the separate nature of CIRR’s operations has created some confusion when shipments for the Lumber District have arrived at Corwith Yard.

Mr. Voshall claims that CIRR and BNSF crews do not communicate and that CIRR locomotives have occasionally entered and left Western Yard without notifying BNSF crews, and that CIRR has left uncoupled and unbraked cars in Western Yard. The BNSF employees state that CIRR crews do not appear to be properly trained, and do not wear safety equipment. They assert further that CIRR crews allegedly leave their locomotives unattended and running, and frequently request assistance from BNSF crews. They indicate further that one of CIRR’s locomotives needs repair and lacks a 2-way radio.

UTU-IL contends further that service to the public has deteriorated since CIRR began operating the trackage. UTU-IL states that it is also concerned that service inefficiencies by CIRR could result in abandonment of the IN Line. It observes that BNSF had previously sought, unsuccessfully, to abandon the IN Line in 1999. See The Burlington Northern and Santa Fe Railway Company–Abandonment of Chicago Area Trackage in Cook County, IL, STB Docket No. AB-6

(Sub-No. 382X) (STB served Sept. 21, 1999) (petition for exemption denied due to insufficient evidence).⁸

The Carriers respond that UTU-IL's allegations are unsubstantiated and are refuted by the letters from shippers and receivers commending CIRR's service. The Carriers contend that service and safety issues are not relevant to a petition for revocation. They indicate further that CIRR's lease of the trackage is intended to forestall abandonment, whereas granting the petition for revocation would make abandonment more likely.

UTU-IL has failed to support its petition to revoke CIRR's acquisition of the involved track from BNSF. UTU-IL has made allegations of unsafe operations but it has made no showing that the Federal Railroad Administration (FRA), which has safety enforcement jurisdiction, has found any safety problems with CIRR. UTU-IL has also alleged inefficient operations and poor service, but the operating problems cited by UTU-IL have apparently not produced any deficiencies in CIRR performance in carrying out its common carrier obligation. To the contrary, the letters submitted by CIRR show that shippers have been pleased with the service provided by that carrier.

Finally, UTU-IL contends that the transaction will adversely impact BNSF employees. The union contends that the lease enables BNSF to escape its collective bargaining agreements, by allowing railroad work to be transferred from BNSF employees to CIRR employees. According to the union, unidentified BNSF employees have lost approximately 2 hours of overtime pay a day, and their morale has suffered, since CIRR took over operations of the trackage.

UTU-IL fails to identify any BNSF employees who have suffered any hardship from this transaction. And the union does not offer any evidence to support its assertion that BNSF employees have lost overtime pay resulting from this lease. Thus, we find these arguments to be unpersuasive with respect to revocation.

Conclusion. For all of the reasons discussed above, there is no basis upon which to reject CIRR's notice of exemption or to revoke the exemption. We conclude that UTU-IL's petition lacks merit.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

⁸ The filing of the 1999 petition for exemption to obtain abandonment authority is further indication that this track falls within our licensing authority.

It is ordered:

1. UTU-IL's motion to strike is denied.
2. UTU-IL's petition to reject and revoke is denied.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary